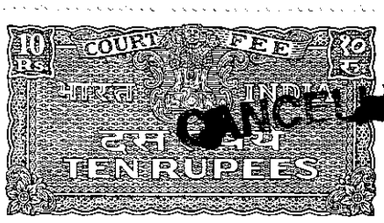

(1)

(3)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR : CHHATTISGARH

CIVIL REVISION NO. 80 OF 2005.

P.R. No. 1631 dt 5
Presented by Shri Parmanand Bhagat Learning
dated 29/6/05

APPLICANT
TENANT

Parivar Seva Sanstha,
Registered under the Societies Act,
C/314, Defence Colony, New Delhi,
Local Address: Marie Stopes Clinic,
Baijnath Para, Raipur,
Chhattisgarh.

-Versus-

NON-APPLICANT
LANDLADY

: 5 Rs

Smt. Padmawati Dixit,
Aged about 70 years,
Wd./o Late Sitacharan Dixit,
Baijnath Para, Raipur,
Chhattisgarh.

CIVIL REVISION UNDER SECTION 23-E (2) of C.G. ACCOMMODATION CONTROL ACT, 1961.

APR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.80/2005

Parivar Sewa Sanstha

Vs.

Padmavati Dixit

ORDER

Post for 20.7.2006

Sd/-
Sunil Kumar Sinha
Judge

Seen.
Counsel for resp.
Counsel for Applicant.

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.80/2005

Parivar Sewa Sanstha

Vs.

Padmavati Dixit

Appearance:

Shri Prashant Mishra, Sr. Advocate with Shri Sanjay K. Agrawal, counsel for the applicant.

Shri Ashish Shrivastava with Shri R. K. Dubey, counsel for the non-applicant.

O R D E R
(20.7.2006)

SUNIL KUMAR SINHA, J

(1) This is a tenant's revision filed u/s 23-E of the M.P (C.G) Accommodation Control Act 1961 (hereinafter referred to as the Act). It has been filed against the order dated 16.5.2005 passed in Case No.6/90(8) 2000-2001 by the Rent Controlling Authority, Raipur (C.G) (hereinafter referred to as the RCA). By the said order, the aforesaid authority has allowed the application for eviction filed by the landlady u/s 23-A(b) of the said Act on the ground of "bonafide requirement" for the purpose of starting hotel business (restaurant) of her major son.

(2) The facts of the case are that the landlady filed the aforesaid application before the RCA on 19.4.2001 inter alia pleading that she is the owner of the non-residential tenanted accommodation described in the map annexed to the application

and the said accommodation is under occupation of the non-applicant, petitioner herein, who is paying the rent @ Rs.7700/- per month. She further pleaded that the accommodation which is situated in the first floor of Dixit Complex, Baijnathpara, Raipur, is bonafidely required by her for the purpose of starting hotel business (restaurant) of her eldest son namely Amitabh Dixit. She further pleaded that this accommodation is suitable for the said business and there is no reasonably suitable alternative accommodation of the applicant in the township of Raipur for starting such a business. She also pleaded that on 18.11.2000, a notice showing her bona-fide requirement was sent by Registered Post to the petitioner/non-applicant whereby the tenancy was terminated w.e.f. 31.1.2001. Since after termination of the tenancy by the aforesaid notice, the possession was not delivered, an order for eviction be passed against the non-applicant.

The tenant, after obtaining leave to defend, filed its written statement denying the contentions of the applicant. It was contended that the said premises was given to them on monthly rent by the husband of the applicant and it was agreed between them that there would be increase of 15% in the monthly rent after every 3 years and the tenancy will continue.. Except that, no other condition was agreed between them. It also pleaded that after the death of original landlord since in the month of Dec. 1999 this applicant also agreed to give the accommodation on monthly rent of Rs.7700/- for a further period of 3 years, she cannot claim eviction before the said period. It specifically denied about the bonafide requirement of this premises by the applicant.

It further pleaded that since the applicant wants to increase the rent and she had also offered to sell the premises to them, the question of bonafide requirement of the applicant does not arise. It prayed for dismissal of the application.

(3) The learned RCA, after framing of issues and after recording evidence of the parties, allowed the application and directed for eviction of the non-applicant u/s 23-A(b) of the said Act. It is against this order of eviction, passed by the RCA, the tenant has filed this revision.

(4) At the arguments, learned counsel for the petitioner submitted that the landlady has not proved that she was the absolute owner of the premises so as to retain a petition u/s 23-E of the Act. She has also not proved that she requires the premises bonafidely, for starting a restaurant business of her son. He further submitted that it has also not been proved that the applicant was having no reasonably suitable alternative non-residential accommodation of her own to start the said business of her son. He also submitted that as per material on record, it would appear that the RCA has not applied its mind to the statutory requirements and has superficially recorded a finding of bonafide need. He also submitted that the R.C.A. did not notice the mandatory provisions of section 23-G of the Act and has not written a single word in this regard. On these counts, he prayed for setting aside the order.

(5) On the contrary, learned counsel for the respondent argued that the non-applicant had admitted that the applicant was landlady and she was the owner of the tenanted premises. He

submitted that the applicant had proved the factum of bonafide requirement and the finding in this regard is supported by evidence on record. His contention was that since the factum of bonafide requirement and that of non-availability of the reasonably suitable alternative non-residential accommodation have been proved by her, the order passed on proved facts by the R.C.A. cannot be interfered with by this Court in limited jurisdiction u/s 23-E of the Act.

(6) I have heard learned counsel for the parties at length and have also perused the records of the R.C.A.

(7) The scope of the High Court considering a revision u/s 23-E of the Act is little more than the revisional jurisdiction exercisable u/s 115 of the Civil Procedure Code and less than the appellate powers exercisable by the High Court provided under the law. The High Court exercising powers u/s 23-E is entitled to interfere with the findings recorded by the Rent Controlling Authority when the court finds that the Rent Controlling Authority has misread the evidence, ignored to consider the evidence and thereby recorded a perverse finding or has committed illegality by misquoting law or misrepresented the law applicable to the case in question ***(Please see 2001 (2) M.P.L.J. 349 – Dhannalal s/o Mannalal –vs- Kalavati Bai and others)***. Hence, u/s 23-E, this Court is entitled to examine the perversity of the finding on the grounds referred to above and if it appears to the Court that the findings are indeed perverse and the order is not based on evidence on record, the same can be set aside in the said revisional jurisdiction. Therefore, the objection taken by the

respondent regarding limited scope of examination cannot be sustained and the scope of examination shall be subject to the law referred to above.

(8) On merits, firstly, I take the ground of ownership of the premises. The requirement of law in this regard has been dealt with by the Apex Court in the matter of ***Sheela and others -vs- Firm Prahlad Rai Prem Prakash, J.T. 2002 (2) S.C. 536***. It has been held vide para 10 of the aforesaid judgment that while seeking an ejectment on the ground of bona fide requirement under clause (f) of Section 12(1), the landlord is required to allege and prove not only that he is a "landlord" but also that he is the "owner" of the premises. The definition of "landlord" and "tenant" as given in clauses (b) and (i) of section 2 of the Act make it clear that under the Act the concept of landlordship is different from that of ownership. A person may be a "landlord" though not an "owner" of the premises. The factor determinative of landlordship is the factum of his receiving or his entitlement to receive the rent of any accommodation. Such receiving or right to receive the rent may be on the own account of the landlord or on account of or for the benefit of any other person. A trustee, a guardian and a receiver are also included in the definition of landlord. Such landlord would be entitled to seek an eviction of the tenant on one or more of such grounds falling within the ambit of section 12(1) of the Act which do not require the landlord to be an owner also so as to be entitled to successfully maintain a claim for eviction. Clause (f) of section 12(1) contemplates a claim for eviction being maintained by an owner-landlord and not a landlord merely. The

Apex Court said that it may hasten to add, that the concept of ownership in a landlord-tenant litigation governed by rent control law has to be distinguished from the one in a little suit. Ownership is a relative term the import whereof depends on the context in which it is used. The Apex Court further held that in rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of some-one else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. The Apex Court referred to two decisions in this paragraph rendered in the matter of ***M.M. Quasim –vs- Manoharlal Sharma (1981) 3 SCC 36 and Dilbagrai Punjabi –Vs- Sharad Chandra (1988) Supp. SCC 710.*** All this has been said by the Apex Court in a matter u/s 12(1)(f) of the Act which is in *pari materia* with section 23-A(b) of the said Act.

(9) Now it has to be examined in case on hand as to whether the respondent/applicant has established that she was the owner of the premises so as to retain a claim u/s 23-A(b) of the aforesaid Act. If we look into the pleadings of the parties it would appear that in the written statement itself, not at one place but at so many places it has been pleaded by the non-applicant that after the death of the husband of the applicant, namely late Seeta Charan Dixit, this applicant also succeeded her estate. It has

been specifically admitted vide para 2 of the written statement that the applicant was the landlady of this accommodation and she has entered into agreement with the tenant. Even assuming for the sake of arguments that she succeeded the premises as a co-owner after death of her husband, it is the settled view of the Apex Court that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. When the property forming the subject-matter of eviction proceedings is owned by several owners, every co-owner owns every part and every bit of the joint property along-with others and it cannot be said that he is only a part-owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. ***Please see (2002) 6 SCC 16 (Dhannalal –vs- Kalawatibai and others)***. Therefore, it is apparent that if the applicant happens to be at-least the co-owner of the property, she can maintain a claim u/s 23-A(b) of the Act. In this case, at least the co-ownership of the applicant is not disputed. Hence, it is held that the proceedings filed by the applicant before the R.C.A. was maintainable and the arguments advanced by the counsel for the petitioner that the proceedings itself was not maintainable, cannot be sustained.

(10) Now I take the point of "*bona fide* requirement". It has been held by the Apex Court in the matter of ***Shiv Sarup Gupta –Vs- Dr. Mahesh Chand Gupta, (1999) 6 S.C.C. 222*** that the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree or intensity contemplated by "requires" is much higher than in mere desire. The Phrase "required bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. The Apex Court said that looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The judge of the facts should place himself in the armchair of the landlord and then ask the question to himself - whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or

pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord.

(11) Referring to the decision rendered in the matter of ***Ram Dass –vs- Ishwar Chander, (1988) 3 SCC 131,*** the Apex Court again held in the matter of ***Baldev Singh Bajwa –Vs- Monish Saini, JT 2005 (12) SC 442*** that the phrase "*bona fide* requirement" or "bona fide need" or "required reasonably in good faith" or "required", occur in almost all Rent Control Acts with the underline legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by Apex Court. In Ram Dass case (supra) it is said that bona fide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably, a subjective element in it, and that desire, to become a 'requirement' in law must have the objective element of a 'need' which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

(12) In *Shiv Sarup Gupta's case (supra)*, the Apex Court described various dictionary meanings of phraseology "*bona fide*". The Chambers 20th Century Dictionary defines bona fide to mean "in good faith: genuine". The word "genuine" means "natural: not spurious: real: pure: sincere". In Law Dictionery, Mozley and Whitley define bona fide to mean "good faith, without fraud or deceit". The applicant has examined two witnesses in this case

namely Smt. Kavita Dixit, daughter-in-law and power of attorney holder of the applicant, and Shri Amitabh Dixit, son of the applicant. It comes in the evidence of daughter-in-law that the son, for whom, the eviction is being sought, has completed his studies 8-9 years back and he had determined to do business from the said date. This witness admits in the cross-examination (Pg.2) that the letter as Ex.D-1 (wrongly written as Ex.P.1 in deposition sheet) was written to the non-applicant by the applicant for increase in rent. She also admits in page 1 that another letter vide Ex.D3 dated 17.5.1997 was also written to the non-applicant by the applicant. In this letter, there is also mention about the increased rent and about a fresh agreement to be entered into between the parties. A third letter, which has been marked as Ex.D-4 and which has been admitted to be sent by the applicant to the non-applicant, contains about the sale of land of Mary Stone Clinic, @ Rs.1500/- per square feet.

In the cross examination this witness categorically admits that the disputed premises was proposed to be sold @ Rs.1500/- per sq. ft. by the applicant. The admission of the witness A.W.1 has been recorded in the following manner.

> "यह कहना सही है कि उपरोक्त विक्रय हेतु प्रस्ताव में आवेदिका ने वादग्रस्त स्थान का 1500–00 रूपये प्रतिवर्ग फीट की दर से विक्रय मूल्य प्रस्तावित किया था ।"

This goes to show that in fact at one point of time, the applicant wanted to sell suit property to the non-applicant at a particular rate. In this connection, further admission comes in

her statement in the last two lines of Para-2 at page 3 in the following manner:

> "अनावेदक संस्था हायर ऐथार्टी सामने नहीं आते है और लोकल अथारिटी बहुत कम रेट में खरीदना मांग रहे थे ।"

This admission further goes to show that in fact the proposed rate of sale was not admitted to the non-applicant and for this, the sale could not be made. According to the letter *Ex.D-4* this is an event of the year 1998. If we look into the earlier part of the evidence of this witness in which it comes that the son of the applicant after completion of his studies, 8-10 years prior to the date of filing of the application, had determined to start a restaurant business, it can be inferred that the need of the premises for starting such business was prevailing since that period and if in between that period there was a talk about the sale of the premises and the sale could not be materialized either on account of dispute of sale price or on account of not taking interest by the higher authorities of the non-applicant, then subsequently filing a petition for eviction on the ground of *bona-fide need* of the same premises on some pretence or pretext, it does not appear to be actual and genuine need of the applicant. In the opinion of this Court in view of the admission by witness (A.W.1), it clearly appears that when the sale at the proposed rate could not be materialized then only the eviction is being sought raising a plea of bona fide need which does not appear to be a genuine need. While examining the admissions and evidence by above angle, I am constrained to ask a question to myself as to

whether I am exceeding my jurisdiction provided u/s 23-E of the said Act ? Though I have quoted the law in this regard in the earlier part of my order, laid down in *Dhannalal's case* (M.P. High Court's Judgment, supra), but I may again quote the law laid down by the Apex Court in the matter of ***Deena Nath –Vs- Pooran Lal JT 2001 (5) SC 380,*** which says that the judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the Superior Court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bona fide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind the statutory mandate if it is found that the court has not applied statutory provisions to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case, the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under section 100 of the Code of Civil Procedure. In para 14 of this judgment, the law laid down in Shiv Sarup Gupta's case (supra) has also been quoted in which it was held that the High Court in revision is obliged to test the order of Rent Controller on the touch stone of "whether it is according to law." For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion

arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available."

(13) I am fortified in views by the above laws that for the limited purpose of testing the correctness of the order and ascertaining as to whether the Rent Controlling Authority has arrived at a right conclusion or the conclusion is wholly unreasonable, I can enter into reappraisal of evidence. After such an exercise on the facts mentioned above, I find that the RCA has not adverted to the correct provisions of law and has not arrived at a correct conclusion and it has recorded a superficial finding ignoring the evidence on record holding that tenanted premises was required bonafidely by the landlord and the need of landlord was true, honest, real and just. I do not agree with the finding recorded by the said authority and the arguments advanced by learned counsel for the petitioner that the RCA has wrongly held that the premises was required *bonafide* by the landlord, is upheld.

(14) Coming to the last point raised by learned counsel for the petitioner about non-compliance of section 23-G of the said Act, firstly, I may say that since I have already held that the need of the applicant was not *bonafide* and the finding in this regard is not correct, then there is no necessity for me to go into this question. However, I only write that section 23-G(2) envisages that where an order for the eviction of a tenant is made on the ground specified in clause (b) of section 23-A, the landlord shall not be entitled to obtain possession thereof before the expiration

of a period of 2 months from the date of the order and if the accommodation is situated in the cities mentioned in sub-clause(b) of this sub-section which includes the city of Raipur, unless the landlord pays to the tenant such sum by way of compensation as may be equal to double the amount of annual standard rent of the accommodation in cases where the accommodation has, for a period of 10 complete years immediately preceding the date on which the landlord files an application for possession thereof, been used for business purpose or for any other purpose alongwith such purpose by the tenant who is being evicted. There are other clauses also. It appears that the R.C.A. has not taken notice of this provision and has not made any mention about this in the order. In my opinion, there is non-compliance of the mandatory provisions of section 23-G in this case, but I am not entering into the consequence of non-compliance thereof or remedy for the same at the revisional stage, because, as stated above, I have already held that the requirement of the applicant was not *bona fide* and she was not entitled to get an order of eviction of the tenant.

(15) In the result, the petition is allowed. The order passed by the Rent Controlling Authority on 16.5.2005 is hereby set aside.

(16) In the facts and circumstances, there shall be no orders as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

20.07.2006

/Rao/